

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION**

APPLETON PAPERS INC. and)	
NCR CORPORATION,)	
)	
Plaintiffs,)	
)	
v.)	No. 08-CV-00016-WCG
)	
GEORGE A. WHITING PAPER COMPANY, <i>et al.</i> ,)	
)	
Defendants.)	

STIPULATION RE: PRETRIAL & TRIAL PROCEDURES

In the interests of judicial economy, and to facilitate an efficient use of the Court's and the parties' time in advance of and during the trial scheduled to begin on February 21, 2012, for the above-captioned matter (the "February trial"),

IT IS HEREBY STIPULATED by Defendants/Counter-Plaintiffs the Georgia-Pacific Defendants,¹ P.H. Glatfelter Company, WTM I Company, CBC Coating, Inc., U.S. Paper Mills Corp., Menasha Corp., City of Appleton and Neenah-Menasha Sewerage Commission (collectively, "Defendants"), and Plaintiffs/Counter-Defendants NCR Corporation and Appleton Papers Inc. (collectively, "Plaintiffs"), through their respective counsel, as follows:

1. **Stipulated Facts:** On or before Tuesday, January 10, 2012, Defendants may send to Plaintiffs, by email, proposed stipulated facts related to any issues subject to adjudication at the February 21, 2012, trial ("relevant issues"). On or before Tuesday, January 17, 2012, Plaintiffs shall send to Defendants, by email, responses to Defendants' proposed stipulated facts. Plaintiffs may also send to

¹ The "Georgia-Pacific Defendants" refers to Defendants Georgia-Pacific Consumer Products LP (f/k/a Fort James Operating Company), Fort James Corporation and Georgia-Pacific LLC.

Defendants, by email, proposed stipulated facts related to any relevant issues. On or before Tuesday, January 24, 2012, Defendants shall send to Plaintiffs, by email, responses to Plaintiffs' proposed stipulated facts. On or before Monday, January 30, 2012, Defendants and Plaintiffs shall jointly file, as part of the pretrial report, any facts to which both sides are willing to stipulate.

2. **Preliminary Witness Lists:** On or before Thursday, January 19, 2012, Defendants and Plaintiffs shall exchange, by email, witness lists, which shall be limited in good faith to only those witnesses whose live testimony (or deposition testimony in lieu of live testimony) Defendants and Plaintiffs expect to present during the February trial. If either side plans to supplement its list after Thursday, January 19, 2012, as a result of the responses to the proposed stipulated facts (*see* Paragraph 1) or for any other reason, it shall promptly notify the other side.

3. **Use of Deposition Testimony:** Witnesses within the subpoena power of the Court can be presented by deposition testimony in lieu of live testimony pursuant to the agreement of all parties. If a party lists a witness within the subpoena power of the Court as being presented by deposition, other parties have the right to object on or before Thursday, January 26, 2012. If an objection is made, the witness must be called live pursuant to the Federal Rules.

4. **Motions in Limine:** On or before Thursday, February 2, 2012, all motions in limine shall be filed; any response shall be filed seven days after a motion is filed.

5. **Joint Initial Pretrial Report:** Defendants shall provide a draft of the joint initial pretrial report to Plaintiffs, by email, on or before Thursday, January 19, 2012. Plaintiffs shall incorporate their sections into the report and provide any other comments to Defendants on or before Tuesday, January 24, 2012. Defendants and Plaintiffs shall then meet and confer about the report as needed. On or before Monday, January 30, 2012, Defendants and Plaintiffs shall jointly file the report. The report shall include the following, pursuant to Civil L. R. 16(b), as amended by agreement of Defendants and Plaintiffs:

(A) A concise summary, not to exceed two pages, of the facts, claims and defenses. Defendants and Plaintiffs shall work in good faith to prepare a joint summary. If agreement cannot be reached, Defendants and Plaintiffs shall have the option of preparing separate summaries;

(B) A concise statement of the issues. Defendants and Plaintiffs shall work in good faith to prepare a joint statement. If agreement cannot be reached, Defendants and Plaintiffs shall have the option of preparing separate statements;

(C) A list of stipulated facts, if any;

(D) The names and addresses of all witnesses expected to testify. Any witness not listed will not be permitted to testify absent a showing of good cause; and

- i. Defendants may present any witness during trial who appears on their list(s) or on Plaintiffs' list;

- ii. Plaintiffs may present any witness during trial who appears on their list or on Defendants' list(s);

(E) A concise statement of the background of all expert witnesses listed.

6. **Pretrial Conference:** On Thursday, February 16, 2012, no earlier than 1:30 p.m., a final pretrial and settlement conference will be held in a location to be determined by the Court.

7. **Deposition designations:** The schedule for exchanging deposition designations shall be as follows:

(A) On or before Monday, January 30, 2012, Defendants and Plaintiffs shall exchange, by email, initial deposition designations;

(B) On or before Monday, February 6, 2012, Defendants and Plaintiffs shall exchange, by email, counter-designations and objections; and

(C) On or before Thursday, February 9, 2012, Defendants and Plaintiffs shall exchange, by email, counter-counter designations and counter-objections.

8. **Intended Trial Exhibits:** The schedule for exchanging intended trial exhibits shall be as follows:

(A) On or before Wednesday, February 1, 2012, Defendants and Plaintiffs shall exchange, by email, lists of intended trial exhibits;

(B) On or before Wednesday, February 8, 2012, Defendants and Plaintiffs shall exchange, by email, objections to the intended trial exhibits;

(C) All unobjected-to intended trial exhibits listed by the parties shall be deemed admitted when offered by either side during trial.

Notwithstanding the foregoing, Defendants and Plaintiffs agree that objections based on relevance are reserved for trial and need not be asserted as set forth above.

(D) Subject to any objections, Defendants may offer any exhibit during trial that appears on their list(s) or on Plaintiffs' list;

(E) Subject to any objections, Plaintiffs may offer any exhibit during trial that appears on their list or on Defendants' list(s); and

(F) Demonstratives do not need to be included on the lists of intended trial exhibits.

9. **Supplemental Pretrial Report:** On or before Monday, February 13, 2012, Defendants and Plaintiffs shall jointly file a supplemental pretrial report, which shall include the following:

(A) Designations, counter-designations and counter-counter designations, along with any objections to those designations, of all depositions or portions of transcripts or other recordings of depositions to be offered in evidence as part of this trial; and

(B) A list of the intended trial exhibits, which shall be sequentially numbered according to General L.R. 26 where possible, along with any objections to those exhibits.

10. **Pretrial Briefs:** Any pretrial briefs are due on or before Tuesday, February 14, 2012. There shall be no rebuttal pretrial briefs.

11. **Trial Schedule:** Consistent with the Court's procedures and subject to the Court's approval, Defendants and Plaintiffs propose the following trial schedule:

- (A) This case shall be called for trial on Tuesday, February 21, 2012, at 9 a.m., in the United State Courthouse, 517 E. Wisconsin Avenue, Milwaukee, Wisconsin;
- (B) Trial shall begin each morning at 9 a.m., unless otherwise directed by the Court; and
- (C) Trial shall last no longer than [nine OR ten] business days, adjourning on [Friday, March 2, 2012 OR Monday, March 5, 2012].

12. **Trial Management:**

- (A) Pursuant to the Court's Minute Entry of December 12, 2011 (Dkt. #1265), Defendants and Plaintiffs shall evenly split the available trial time;
- (B) Defendants shall present their case-in-chief first, followed by Plaintiffs;
- (C) Defendants reserve their right to present a rebuttal, if the Court so allows and they have time remaining;
- (D) Plaintiffs reserve their right to present a surrebuttal, if the Court so allows and they have time remaining;
- (E) Defendants and Plaintiffs shall each have 30 hours total to present their respective cases. The amount of time used by each side shall be monitored by a neutral party, to be agreed-upon by Defendants and Plaintiffs in advance of trial, as well as by Defendants and Plaintiffs

themselves. After trial is adjourned each day, Defendants and Plaintiffs shall confer about the time used by each side that day and in total.

Defendants and Plaintiffs shall work in good faith to resolve any discrepancies, with disputes taken to the Court only as a last resort;

(F) The following shall be deducted from Defendants' available time:

- i. Direct and re-direct testimony of Defendants' witnesses;
- ii. Cross-examination of Plaintiffs' witnesses;
- iii. Presentation of deposition designations or counter-designations by Defendants, whenever presented;
- iv. Presentation of written statements in lieu of testimony by Defendants;
- v. Presentation of trial exhibits by Defendants;
- vi. Presentation and resolution of objections raised by Defendants;
- vii. Presentation of Defendants' rebuttal, if any; and
- viii. Any other arguments or presentations raised by Defendants.

(G) The following shall be deducted from Plaintiffs' available time:

- i. Direct and re-direct testimony of Plaintiffs' witnesses;
- ii. Cross-examination of Defendants' witnesses;
- iii. Presentation of deposition designations or counter-designations by Plaintiffs, whenever presented;
- iv. Presentation of written statements in lieu of testimony by Plaintiffs;

- v. Presentation of trial exhibits by Plaintiffs;
- vi. Presentation and resolution of objections raised by Plaintiffs;
- vii. Presentation of Plaintiffs' surrebuttal, if any; and
- viii. Any other arguments or presentations raised by Plaintiffs.

(H) Housekeeping matters shall not be deducted from either Defendants' or Plaintiffs' available time; and

(I) Neither side shall present an opening or closing argument to the Court.

13. **Expert Testimony:**

(A) Defendants and Plaintiffs shall have the option but not obligation to present a written statement prepared by an expert witness in lieu of live direct testimony of that expert;

(B) All prepared written statements must be provided to the other side at least 48 hours (excluding weekend hours) in advance of when the statement will be presented to the Court. For example, if a party plans to present a written statement on Tuesday morning at 10 a.m., then the statement must be provided to the other side no later than the preceding Friday at 10 a.m.;

(C) Any objections to a written statement shall be made at the time the statement is presented to the Court; and

(D) Defendants and Plaintiffs agree to make any testifying expert witness available for cross-examination regardless of whether the expert's direct testimony is presented via written statement or live.

14. **Notification of Witness Testimony:** Defendants and Plaintiffs shall notify each other at least 48 hours (excluding weekend hours) in advance of when any particular fact or expert witness will be called live, as well as of the order in which witnesses will be called on that particular trial day.

15. **Exchange of Demonstrative Exhibits:** Defendants and Plaintiffs shall provide the other side with any demonstrative exhibit at least 48 hours in advance of when that demonstrative exhibit will be used at trial.

16. **Trial Equipment:** Defendants and Plaintiffs shall share the cost of any audio-visual equipment that both sides intend to use at trial. The parties shall work together and with the Court in advance of trial to make the necessary arrangements.

17. **Post-Trial Submissions:**

(A) On or before Monday, April 2, 2012, Defendants and Plaintiffs shall file proposed findings of fact and conclusions of law, together with any required supplementation to the pretrial briefs. Such submissions shall not exceed 60 pages in total; and

(B) On or before Monday, April 23, 2012, Defendants and Plaintiffs may file responses to the proposed findings of fact and conclusions of law. Such submissions shall not exceed 30 pages in total.

Dated: January 4, 2012

/s/ Darin P. McAtee
CRAVATH, SWAINE & MOORE LLP
Evan R. Chesler
Sandra C. Goldstein
Darin P. McAtee
Worldwide Plaza, 825 Eighth Avenue
New York, New York 10019
Phone: (212) 474-1000
Fax: (212) 474-3700
dmcatee@cravath.com

SIDLEY AUSTIN LLP
Kathleen L. Roach
Evan B. Westerfield
One South Dearborn Street
Chicago, Illinois 60603
Phone: (312) 853-7000
Fax: (312) 853-7036

MARTEN LAW PLLC
Linda R. Larson
Bradley M. Marten
1191 Second Avenue
Suite 2200
Seattle, Washington 98101
Phone: (206) 292-2600
Fax: (206) 292-2601

Attorneys for NCR Corporation

s/Ronald R. Ragatz
DEWITT ROSS & STEVENS S.C.
Ronald R. Ragatz
Dennis P. Birke
Megan A. Senatori
Two East Mifflin Street
Madison, WI 53703
Phone: (608) 255-8891
Fax: (608) 252-9243

HERMES LAW, LTD.
Michael L. Hermes
Heidi D. Melzer
Brandon J. Evans
Ericka L. Krumrie
333 Main Street, Suite 601
Green Bay, WI 54301
Phone: (920) 436-9870
Fax: (920) 436-9871

Attorneys for Appleton Papers Inc.

/s/ Mary Rose Alexander

Mary Rose Alexander
Margrethe K. Kearney
Latham & Watkins LLP
233 S. Wacker Dr. Ste. 5800
Chicago, IL 60606
Telephone: (312) 872-7700
Facsimile: (312) 993-9767
Mary.Rose.Alexander@lw.com
Karl S. Lytz
Patrick J. Ferguson
Latham & Watkins LLP
505 Montgomery St., Ste. 2000
San Francisco, CA 94111-6538
Telephone: (415) 391-0600
Fax: (415) 395-8095
Karl.Lytz@lw.com

**Attorneys for Defendant Georgia-Pacific
LLC**

s/ William H. Harbeck

William H. Harbeck (Wis. Bar No. 1007004)
Peter C. Karegeannes (Wis. Bar No. 1015025)
Nancy K. Peterson (Wis. Bar No. 1000197)
Quarles & Brady LLP
411 E. Wisconsin Avenue
Milwaukee, WI 53202
Telephone: (414) 277-5000
william.harbeck@quarles.com

Attorneys for Defendant WTM I Company

s/ David G. Mandelbaum

David G. Mandelbaum
Marc E. Davies
Monique M. Mooney
Sabrina Mizrachi
Caleb J. Holmes
Adam B. Silverman
GREENBERG TRAURIG, LLP
Two Commerce Square, Suite 2700
2001 Market Street
Philadelphia, PA 19103
215.988.7800
mandelbaumd@gtlaw.com

**Attorneys for Defendant P.H. Glatfelter
Company**

s/ Susan E. Lovern

Susan E. Lovern (#1025632)
Michael P. Carlton (#1016037)
Thomas Armstrong (#1016529)
Kelly J. Noyes (#1064809)
von Briesen & Roper, s.c.
411 East Wisconsin Avenue, Suite 700
Milwaukee, WI 53202
Telephone: (414) 276-1122
Fax: (414) 276-6281
slovern@vonbriesen.com
mcarlton@vonbriesen.com
tarmstro@vonbriesen.com
knoyes@vonbriesen.com

Attorneys for Defendant CBC Coating, Inc.

s/ Scott W. Hansen

Scott W. Hansen
Steven P. Bogart
Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 1700
P.O. Box. 2965
Milwaukee, WI 53202
Telephone: 414-298-1000
Fax: 414-298-8097
sbogart@reinhartlaw.com
shansen@reinhartlaw.com

Thomas R. Gottshall
Stephen F. McKinney
Haynsworth Sinkler Boyd PA
1201 Main Street, Suite 2200
P.O. Box 11889
Columbia, SC 29211-1889
Telephone: 803-779-3080
Fax: 803-765-1243
tgottshall@hsblawfirm.com
smckinney@hsblawfirm.com

Attorneys for Defendant U.S. Paper Mills

s/William J. Mulligan

William J. Mulligan (WI Bar No. 1008465)
Kevin J. Lyons (WI Bar No. 1013826)
Elizabeth K. Miles (WI Bar No. 1064284)
Davis & Kuelthau, s.c.
111 E. Kilbourn Avenue, Suite 1400
Milwaukee, WI 53202
Telephone: (414) 276-0200
Fax: (414) 276-9369
Email:
wmulligan@dkattorneys.com
klyons@dkattorneys.com
emiles@dkattorneys.com

**Attorneys for Neenah-Menasha Sewerage
Commission**

s/ Philip C. Hunsucker

Philip C. Hunsucker
David A. Rabbino
Christopher J. Dow
Hunsucker Goodstein & Nelson PC
3717 Mt. Diablo Blvd., Suite 200
Lafayette, CA 94549
Telephone: (925) 284-0840
Fax: (925) 284-0870
phunsucker@hgnlaw.com

Attorneys for Menasha Corp.

s/ Paul G. Kent

Paul G. Kent (#1002924)
Richard C. Yde (#1013600)
Ted Waskowski (#1003254)
Stafford Rosenbaum LLP
222 W. Washington Avenue, Suite 900
P.O. Box 1784
Madison, WI 53701-1784
Telephone: (608) 256-0226
Email: pkent@staffordlaw.com

James P. Walsh (#1009328)
Appleton City Attorney's Office
100 North Appleton Street
Appleton, WI 54911-4702
Telephone: (920) 832-6423
Email: jim.walsh@appleton.org

Attorneys for City of Appleton